

executor to all right, so far as the sales should be applied in lieu of and in anticipation of that fund. As executor, he, of course, was entitled to receive the fund, and there could have been no necessity for substituting him for that purpose, and the only object of the agreement was to enable him, after paying the debts of the deceased out of the property and money which were thereby made applicable to that purpose, to reimburse himself. That is, if the Virginia fund had been collected and with it the debts of the testator paid, Mrs. Bland would have been entitled for life to the property and money bequeathed to her, and if Mayo had sold that property and taken that money in trust for the parties entitled in remainder, he must have paid Mrs. Bland interest on the amount for life. But as her property and the money were taken, it was the design of the agreement to that extent that Mayo should hold the Virginia fund in lieu of it, and pay her interest upon it for life.

It was, however, subsequently discovered, that the Virginia fund was not sufficient to pay the debts of the testator, and consequently, according to the opinion I have formed of the character of the bequest to Mrs. Bland, the property embraced in that bequest, was liable to supply the deficiency. Certainly, so far as the cash on hand and salary are concerned there can be no difference of opinion on the subject, for no one can say the bequest so far as those items are concerned is specific.

When this discovery was made does not appear, but it does appear that some time after the statement, No. 4, was made, Captain Mayo refused to pay the semi-annual interest, and refused and instructed his counsel to refuse to give the judgment by which the payment was to be secured.

In this state of things, and after some negotiation between the counsel of the parties, it was agreed that a case should be docketed, by consent, and judgment confessed, subject to an agreement filed in Anne Arundel County Court, on the 25th of October, 1849, whereby it was stipulated that the damage should be relieved on payment semi-annually of the interest on the sum mentioned in the statement before referred to. But it was also expressly agreed, "that the judgment was rendered in settlement